

PRODUCER PASS-THROUGH AGREEMENT

THIS AGREEMENT made and entered into this _____ day of _____, by and between _____ herein referred to as _____ and _____ hereinafter referred to as 'Producer'.

WHEREAS, _____ sells feed which is suitable in the industry for the growing of weanling pigs to slaughter weight and wants an assured market for the sale of such feed; and

WHEREAS, _____ has entered into a contract to purchase weanling pigs from a single source for sale to Producer; and

WHEREAS, Producer desires to purchase such weanling pigs from _____ for the sole purpose of growing them to slaughter weight.

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE MUTUAL COVENANTS AND CONDITIONS HEREINAFTER AS SET FORTH, THE PRODUCER AND _____ AGREE AS FOLLOWS:

1. SWINE PURCHASE. _____ hereby sells to Producer, and Producer will purchase and accept from _____ the following described swine under the following terms and conditions:

a) Quantity Purchased. _____ will supply approximately _____ weanling pigs at approximately eighteen (18) week intervals.

b) Condition. The weanling pigs will be delivered between 15 and 21 days of age from the date of birth. Upon delivery, all pigs will be graded as grade one, substandard, or reject and then substandard and reject pigs shall be regraded approximately 48 hours after delivery. The purpose of the regrading is to allow for a more precise evaluation of the substandard and reject pigs at delivery and further to provide adequate time for both parties to evaluate the pigs delivered.

Pigs weighing 8 pounds or more will be classified as grade one. Pigs weighing less than 8 pounds will be classified as substandard. Sick, crippled, damaged or dead pigs not acceptable to Producer are to be classified as rejects and upon regrading shall be destroyed and not counted as part of the quantity delivered to Producer.

c) Substandard Policy. Should substandard pigs total more than 2% of the quantity delivered, Producer may elect to not accept such pigs as part of the quantity requirements of this Agreement and _____ shall have the right to retain the ownership of the substandard pigs. Substandard pigs will be ear notched at the time of regrading and sold outside the production system as feeder pigs at approximately 40 pounds of body weight. The purpose of this substandard policy is for Producer to take all weanling pigs that are capable of reaching 40 pounds of body weight within 7 weeks of growth.

time in the nursery. If ownership of the substandard pigs is retained by Purina, but housed and fed by Producer, or its assigns, then shall pay Producer, the sum of \$15.00 per pig for production costs.

- d) Breeding and Genetics. The genetics for the weanling pigs supplied pursuant to this Agreement will utilize _____ gilts and _____ boars. The parties further agree the _____ may substitute another genetic line, but such genetic line will be similar to or better than the current genetics.
- e) Pricing. Producer agrees to pay \$33.00 per weanling pig delivered between 15 and 21 days of age which are graded one at the time of regrading. The price of pigs which grade substandard and which Producer elects to accept, will be 75% of grade one price or \$24.75 per pig.

2. TERM. The term of this Agreement shall commence _____ and run through the close of business on _____, unless terminated earlier under the provisions contained herein and except as otherwise provided. The provisions of this Agreement shall apply until all of the obligations of _____ Producer have been satisfied in full. The term may be extended by mutual agreement of the parties in a writing signed by _____ and Producer on or before _____.

3. DELIVERY.

- a) Delivery of the pigs subject to this Agreement is to be at the location of the nursery facility designated by Producer.
- b) All charges for delivery of the pigs are to be paid by _____ if within a 250 mile radius of _____ if the place of delivery is outside the 250 mile radius, Producer and _____ will negotiate the charges for delivery.
- c) Producer or Producer's agent shall be available to accept and sign for the weanling pigs when they are delivered. If Producer or Producer's agent is not available when the pigs are to be delivered, then _____ reserves the right to charge to the Producer any additional expenses incurred by multiple attempts at delivery.

4. DISEASE/DISEASE INSPECTION. _____ shall cause the pigs to pass federal, state and all other necessary inspections for all diseases. No sick, crippled or damaged pig failing to pass the above inspections and not approved for transportation by federal and state law are to be counted as part of the quantity delivered to Producer.

5. INSPECTION BY PRODUCER/NOTICE TO PURINA.

- a) Producer shall have the right to examine the pigs on arrival as specified above. Pigs will be graded as grade one, substandard or reject within 24 hours after delivery. Substandard and reject pigs are subject to regrading 48 hours after delivery. Producer must provide written, signed notice of grading and regrading to _____ immediately after grading or regrading by

facsimile; Producer will also send a copy of this notice to the producer of the pigs, or such other producer of the pigs as hereafter notify Producer. Such notice shall detail the weight, condition, quality and grade of the pigs and the basis for any designation by Producer as to substandard or reject; and

- b) Notice shall be given to each party at the following facsimile numbers:

Sow Unit:

- c) Producer's failure to comply with these provisions shall constitute irrevocable acceptance of the pigs and bind it to pay the contract price for the pigs delivered.

6. **BASIS FOR REJECTION.** For the purpose of determining whether Producer has a reasonable basis for rejecting any of the pigs shipped pursuant to this agreement, there shall be sufficient reason for rejection if the pigs have failed to pass any of the inspections specified in Paragraph 7 of this Agreement.

7. **WARRANTIES.**

- a) warrants that pigs shall be free from any and all liens and encumbrances except for the lien in favor of its primary lender, and upon payment to and its lender, such lien shall be released and further expressly warrants it will defend title to the pigs and indemnify Producer and from and against any and all loss or damage on account of such liens, encumbrances, other defects in title; and
- b) further warrants the pigs shall be in good and merchantable condition prior to delivery at the above specified time and place.
- c) further warrants that all weanling pigs will be of acceptable quality. Acceptable quality shall mean any weanling pig which does not have any of the following characteristics, as such terms are generally used in the industry:
- i) Uncastrated or recently castrated male pigs and/or any weanling pig with undocked tails.
 - ii) Any umbilical or scrotal hernia.
 - iii) Any active, suspected, confirmed or subclinical case of atrophic rhinitis evidenced by a twisted or deformed snout with or without epistaxis (bleeding).

- iv) Any active, suspected, confirmed or subclinical case of respiratory disease as evidenced by dyspnea, abdominal breathing, mouth breathing, decreased exercise tolerance, cyanosis of the extremities or coughing.
- v) Unthrifty, long-haired, older, 'poor doing' pigs in excess of 21 days of age as evidenced by ear tattoo.
- vi) Observable signs of stiffness, lameness or other locomotor disorders evidenced by swelling or malformed several joints.
- vii) Freshly cut or unhealed wounds or rectal prolapse.
- viii) Observable mange or lice.
- ix) Produced once there is an outbreak of pseudorabies at the facility (except as otherwise provided in Paragraph 4 of this Agreement).
- x) Any active, suspected, confirmed or subclinical case of Actinobacillus pleuropneumonia (haemophilus), Serpulina hyodysenterae (swine dysentery), Salmonella choleraesuis, or Transmissible Gastroenteritis (TGE) at the facility.

8. NO WARRANTIES BY EXCEPT AS SPECIFICALLY SET FORTH
IN THIS AGREEMENT MAKES NO WARRANTIES, EXPRESS OR
 IMPLIED, UNDER THIS AGREEMENT TO PRODUCER, INCLUDING ANY
 WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A
 PARTICULAR PURPOSE.

9. INDEMNIFICATION. Producer agrees to indemnify and hold harmless
 from and against any and all losses, claims and judgments arising out of, based on,
 or resulting from the Producer's breach of this Agreement, including but not
 limited to claims from third parties.

10. PAYMENT OF PURCHASE PRICE. The purchase price for the pigs as set forth
 in this contract shall be paid 2 business days after the date of regrading. Payment is
 deemed to be made on the date of mailing as determined by the postmark.

11. WEIGHING. A pig shall be weighed on certified scales and the cost for such
 weighing shall be Producer's.

12. FORCE MAJEURE. Should the performance of this agreement by either party be
 prevented or delayed by act of God, or civil insurrection, fire, flood, storm, strikes,
 lockouts, total or partial failure of transportation or delivery facility, interruption of
 power, or by any law, regulation or order of any federal, state, county or municipal
 authority, or by any other cause beyond the control of such party, such parties'
 performance to the extent it is so prevented or delayed shall be excused, except as
 provided hereafter. Provided, however, should Producer's performance be
 prevented or delayed by any such cause, Producer may during such period accept
 such portion of the pigs as it deems, in its sole judgment, it can economically
 process. Any of the pigs not accepted by Producer because of the provisions of

this Paragraph 12 shall be automatically released to _____ for sale or disposal elsewhere. Damage or destruction to the facilities causing the excuse or delay of performance shall be repaired or replaced as soon as is reasonably possible so that complete performance can be reinstated as soon as possible. Producer shall carry insurance in an amount necessary to cover reconstruction. Proof of such coverage shall be provided to Purina each year this Agreement is in effect.

13. TRANSFER OF TITLE. Title to the pigs that are subject to this agreement shall remain in _____ name until delivery to the premises directed by Producer. Title shall be transferred free and clear of any liens and encumbrances.

14. RISK OF LOSS. The risk of loss shall pass from _____ to Producer when pigs have been delivered to the facility directed by Producer as specified in this Agreement.

15. FEED AGREEMENT. Producer acknowledges that _____'s interest in entering into this Agreement is to supply nutritional products and programs.

- a) Producer, therefore, agrees to feed nutritional products manufactured and supplied by _____ to all of the pigs furnished under this Agreement. If Producer fails to feed the pigs _____ products, the price per pig shall be increased by five dollars (\$5.00) each. Producer agrees to furnish to all data and other documentation as _____ deems necessary to complete and verify group closeouts.

16. TERMINATION.

- a) Conditions of Breach by _____ In addition to other rights of termination contained in this Agreement, Producer shall have the right and privilege to terminate this Agreement if:

- i) _____ violates any material provision, term or condition of this Agreement including, but not limited to, failure to pay any monetary obligation to Producer.
- ii) _____ fails to timely pay any of its uncontested obligations or liabilities due and owing to Producer.
- iii) _____ is deemed insolvent within the meaning of any state or federal law, any involuntary petition for bankruptcy is filed against _____ or _____ files for bankruptcy or is adjudicated a bankrupt under state or federal law.
- iv) _____ makes an assignment for the benefit of creditors or enters into any similar arrangement for the disposition of its assets for the benefit of creditors without the approval of Producer which Producer will not unreasonably withhold.

- b) Conditions of Breach by Producer. In addition to other rights of termination contained in this Agreement, _____ shall have the right and privilege to terminate this Agreement if:

- i) Producer violates any material provision, term or condition of this Agreement.
 - ii) Producer fails to timely pay any material uncontested obligation due and owing to
 - iii) Producer is deemed insolvent within the meaning of any state or federal law, any involuntary petition for bankruptcy is filed against Producer, or Producer files for bankruptcy or is adjudicated a bankrupt under state or federal law.
 - iv) Producer makes an assignment for the benefit of creditors or enters into any similar arrangement for the disposition of its assets for the benefit of creditors without the approval of which will not unreasonably withhold.
- c) Notice of Breach. Neither party shall have the right to terminate this Agreement unless and until:
- i) Written notice setting forth the alleged breach in detail has been delivered to the other party; and
 - ii) The other party has failed to correct the alleged breach within the period of time specified by applicable law or by this Agreement. In the event the applicable law does not specify a time period to correct an alleged breach, then the other party shall have 90 days after receipt of written notice to correct the alleged breach, except where the written notice states that the alleged breach is delinquency in payment due pursuant to this Agreement, in which case the other party shall have fifteen (15) days after receipt of written notice in which to correct the breach by making full payment to the party giving notice.
- d) Notice of Termination. If one party has timely complied with the notice provisions in the preceding subparagraph (c) and the other party has not cured the alleged breach set forth in the notice within the time period specified, the party shall have the absolute right to terminate this Agreement by giving the other party written notice that this Agreement is terminated, and in that event, the effective date of termination of this Agreement shall be the day the written notice of termination is received by the other party.
- e) Damages. In the event this Agreement is terminated by a party pursuant to this Paragraph, or if the other party breaches this Agreement by a wrongful termination or a termination that is not in accordance with the terms and conditions of this Paragraph, the party may seek to recover from the other party all damages the party has sustained and will sustain in the future as a result of the other party's breach of this Agreement except as further provided for herein.

- f) Limitation of Damages. PRODUCER'S RIGHT TO DAMAGES HEREUNDER IS STRICTLY LIMITED TO ACTUAL DAMAGES INCURRED DUE TO BREACH. SHALL NOT BE LIABLE FOR, AND PRODUCER EXPRESSLY WAIVES ANY CLAIM TO, INCIDENTAL OR SPECIAL DAMAGES.

17. HERD HEALTH. If, as determined by the health status of the weanling pig source herd deteriorates, shall notify Producer of such status and, at its option, may terminate this Agreement in its entirety. shall not be deemed to be in default or liable to the Producer to provide weanling pigs, if the health of the weanling pig source herd causes this Agreement to be terminated.

18. DISPUTE RESOLUTION. Any issues regarding the health or quality of pigs sold or purchased pursuant to this Agreement shall be resolved through arbitration before a neutral arbitrator acceptable to all parties involved.

- a) Selection of Arbitrator. The party questioning the health or quality of the pigs ("Complaining Party") shall submit a list of not fewer than three (3) potential arbitrators to the other party(ies), all of whom have at least three (3) years of arbitration experience, have received formal arbitration training and have no current or former relationship with the Complaining Party. Within fourteen (14) days after receipt of the list from the Complaining Party, the other party(ies) shall select the arbitrator from this list or, if none of the suggested arbitrators is acceptable, send the Complaining Party a notice that none of the suggested arbitrators is acceptable with an explanation of the party's reasonable objection(s) to each suggested arbitrator and a list of not fewer than three (3) suggested arbitrators, all of whom have at least three (3) years of arbitration experience, have received formal arbitration training and have no current or former relationship with the party. The Complaining Party then has fourteen (14) days from the date of receipt of the list in which to select an arbitrator from the list or provide its reasonable objections to all arbitrators on the list to the other party(ies), with another list of suggested arbitrators as described above. This process shall be repeated until all parties agree on an arbitrator.
- b) Location, Date and Time of Arbitration. The location, date and time of the arbitration shall be established by the arbitrator after consultation with all parties involved.
- c) Arbitrator's Fee. The parties shall share equally the fees and expenses of the arbitrator and other joint costs of the arbitration (such as room rental).
- d) Parties' Expenses. Each party shall bear its own costs of preparation, attendance and participation in the arbitration.
- e) Ruling. The arbitrator shall render a ruling in writing to the parties not more than thirty (30) days after the end of the arbitration.